



Terry Tamminen
*Secretary for
Environmental
Protection*

State Water Resources Control Board

Division of Water Rights

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Arnold Schwarzenegger
Governor

FEB - 4 2004

Mr. Chester Bowling
Operations Manager
Central Valley Operations Office
Bureau of Reclamation
3310 El Camino Ave., Suite 300
Sacramento, CA 95821

Dear Mr. Bowling:

PETITION FOR TEMPORARY URGENCY CHANGE IN PERMIT TERM FOR NEW MELONES DAM AND RESERVOIR (APPLICATIONS 14858A, 14858B AND 19304)

This letter is in response to your letter dated January 30, 2004, requesting a temporary urgency change in the permit conditions for New Melones Reservoir. In your letter, you request relief from the February thru June San Joaquin River fish and wildlife flow objective (with the exception of the April/May pulse flow period) at Vernalis during 2004. (See D-1641, condition 2(a) at page 161; Table 3 at page 184.) You state that the reason for the requested change is to preserve carryover storage that has been reduced during the past three years due to dry conditions in the San Joaquin River watershed. You indicate that low carryover storage may affect the United States Bureau of Reclamation's (USBR) ability to comply with permit conditions and fulfill all water needs in 2005 and subsequent years. You state that USBR will reinitiate consultation with the United States Fish and Wildlife Service (USFWS) on the requirements for protection of Delta smelt given USBR's request to temporarily forego compliance with the fish and wildlife flow objective (which is intended to provide protection for Delta smelt). You explain that the Central Valley Project Improvement Act Section 3406(b)(2) water that would have been used to meet the flow requirement will instead be used elsewhere in the Central Valley Project (CVP) system to meet fisheries needs. You indicate that New Melones Reservoir will be operated to meet minimum fishery flows in the Stanislaus River, water right agreements, and the Vernalis salinity objectives.

The State Water Resources Control Board (SWRCB), Division of Water Rights (Division) will consider your January 30, 2004 request for relief from the February thru June fish and wildlife flow objective as a Petition for Temporary Urgency Change pursuant to Water Code section 1435 et seq. However, before the Division can begin processing USBR's petition, additional information will be required. Specifically, the Division requests additional information regarding the various findings that the Division must make before approving a change pursuant to Water Code section 1435. Consequently, please submit detailed responses regarding the following questions as soon as possible:

- (1) Why is there an urgent need for the requested change?
- (2) Are there any potentially adverse impacts to other legal users of water associated with the proposed change? If so, how will these impacts be mitigated?

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- (3) Are there any potentially unreasonable effects on fish, wildlife, or other instream beneficial uses that may result from the proposed change? If so, how will these unreasonable effects be addressed?
- (4) Is the proposed change in the public interest? If so, please explain why?

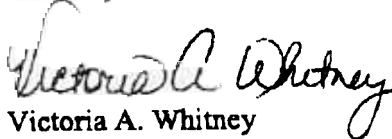
In addition, please provide a proposed alternative flow objective and the basis for that objective.

The Division requests that you submit the above information as soon as possible so that processing of the requested change may begin. If the requested information is not provided by Monday, February 9, 2004, it may be impossible for the Division to process USBR's request as a Petition for Temporary Urgency Change for the month of February. USBR should be aware that if the Division is unable to process the proposed change for the month of February, and USBR violates flow standards, the Division may recommend the SWRCB take appropriate enforcement action on this matter.

Previously, the SWRCB informed USBR that in order to change the fish and wildlife flow requirement in the short term, USBR should file a Petition for Temporary Urgency Change. In order to pursue a long-term change in this requirement, the SWRCB indicated that this issue should be addressed during periodic review of the Bay-Delta Water Quality Control Plan and followed by a petition for long-term or permanent change. In May of 2003, USBR submitted a Temporary Urgency Change Petition to temporarily change the fish and wildlife flow requirement during February, the end of May, and June of 2003. However, the Division recommended that USBR withdraw the petition as the request was primarily applicable to the month of February and as such could not be considered urgent since the petition was filed three months after the violation of the objective occurred. Consequently, if USBR believes that Petitions for Temporary Urgency Change may be necessary in the future, it should submit the petition, as well as the required information discussed above, in advance of the time frame in which the change is requested. In addition, as indicated above, USBR should submit the requested material as soon as possible for the current change petition.

If you have any further questions concerning this matter, please contact Diane Riddle, the Environmental Scientist assigned to this matter at (916) 341-5297.

Sincerely,



Victoria A. Whitney
Division Chief

cc: Paul Fujitani
Central Valley Operations Office
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cc: (Continuation page.)

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